

This Opinion is not a
Precedent of the TTAB

Mailed: April 15, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Gulf Breeze Treatment Center, LLC

Serial No. 88934988

Tye Biasco of Patterson Thuente Pedersen, P.A.,
for Gulf Breeze Treatment Center, LLC.

Jessica Hilliard, Trademark Examining Attorney, Law Office 120,
David Miller, Managing Attorney.

Before Lykos, Heasley, and Lebow,
Administrative Trademark Judges.

Opinion by Heasley, Administrative Trademark Judge:

Gulf Breeze Treatment Center, LLC (“Applicant”) seeks registration on the Principal Register of the proposed mark **TELERECOVERY** (in standard characters) for “addiction treatment services, namely, drug and alcohol addiction counseling,” in International Class 44.¹

¹ Application Serial No. 88934988 was filed on May 27, 2020, based on a declared intention to use the proposed mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

Citations to the examination record refer to the USPTO’s Trademark Status & Document Retrieval (“TSDR”) system and identify the documents by title, date, and page in the

The Trademark Examining Attorney has refused registration of Applicant's proposed mark under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground of mere descriptiveness. Applicant appealed and filed a request for reconsideration, which the Examining Attorney denied. This appeal resumed, and is now fully briefed.

I. Analysis

Section 2(e)(1) of the Trademark Act provides that a proposed mark may be refused registration on the Principal Register if it consists of “a mark which, . . . when used on or in connection with the goods [or services] of the applicant is merely descriptive . . . of them....” 15 U.S.C. §§ 1052(e)(1), 1053. A proposed mark is merely descriptive if it immediately conveys information regarding a characteristic, function, or purpose of goods or services. *DuoProSS Meditech Corp. v. Inviro Medical Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012) (citing *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 217 (CCPA 1978)).

“On the other hand, a mark is not descriptive, but is instead ‘suggestive,’ if it ‘requires imagination, thought and perception to reach a conclusion’ about the nature of the goods [or services].” *Brooklyn Brewery Corp. v. Brooklyn Brew Shop, LLC*, 17 F.4th 129, 2021 USPQ2d 1069, *12 (Fed. Cir. 2021) (quoting *DuoProSS*, 103 USPQ2d at 1755). “[M]arks that are merely descriptive cannot be registered unless they acquire secondary meaning under § 2(f) of the Lanham Act, 15 U.S.C. § 1052(f), but

downloadable .pdf version. Citations to the appeal record are to the Board's TTABVUE online docketing system.

marks that are suggestive are ‘inherently distinctive’ and can be registered.” *In re N.C. Lottery*, 866 F.3d 1363, 123 USPQ2d 1707, 1709 (Fed. Cir. 2017).

Applicant’s proposed mark consists of TELE and RECOVERY joined without a space between them. “It is almost too well established to cite cases for the proposition that an otherwise merely descriptive term is not made any less so by merely omitting spaces between the words.” *Minnesota Mining & Mfg. Co. v. Addressograph-Multigraph Corp.*, 155 USPQ 470, 472 (TTAB 1967). *See, e.g., In re Finisar Corp.*, 78 USPQ2d 1618 (TTAB 2006), *aff’d per curiam*, 223 Fed. App’x 984 (Fed. Cir. 2007) (SMARTSFP held merely descriptive of optical transceivers). “Recovery” means “a return to a normal state of health, mind, or strength.”² “Tele-” is a combining form meaning “to or at a distance.”³

The Examining Attorney contends that TELERECOVERY immediately describes the function and purpose of Applicant’s services: using long-distance telecommunications to help addicts recover.⁴ She contends that “[t]he term ‘TELE’ used as a prefix has become commonly recognized as designation for services that are provided at a distance through electronic means”⁵—for example, “telecommunication.”⁶ She also submits over three dozen third-party registrations

² Lexico.com, Aug. 5, 2020 Office Action at 9.

³ Lexico.com, Aug. 5, 2020 Office Action at TSDR 5.

⁴ Examining Attorney’s brief, 8 TTABVUE 5-6.

⁵ Examining Attorney’s brief, 8 TTABVUE 5.

⁶ Merriam-Webster.com 4/13/22. “The Board may take judicial notice of dictionary definitions, acronyms, and abbreviations including definitions, acronyms and abbreviations in technical dictionaries, translation dictionaries and online dictionaries which exist in printed format or that have regular fixed editions.” TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF

disclaiming “recovery” as used in connection with addiction treatment services.⁷ *Real Foods Pty Ltd. v. Frito-Lay North Am., Inc.*, 906 F.3d 965, 128 USPQ2d 1370, 1375 (Fed. Cir. 2018); *see also Alcatraz Media Inc. v. Chesapeake Marine Tours Inc.*, 107 USPQ2d 1750, 1762 (TTAB 2013), *aff’d* 565 F. App’x. 900 (Fed. Cir. 2014) (disclaimer is effectively a concession that a term is at least merely descriptive).

Applicant argues that the Examining Attorney has improperly assumed that it offers its addiction counseling services by telephone. “In fact, the services are provided via online communication,” it states. “The services to be provided under that Applied-For Mark are addiction treatment services via online video.”⁸ Citing *Nautilus Grp., Inc. v. Icon Health & Fitness, Inc.*, 372 F.3d 1330, 71 USPQ2d 1173, 1183 (Fed. Cir. 2004), Applicant maintains that TELERECOVERY is suggestive: “[E]ven i[f] a consumer knew ... the services (addiction treatment services) that linking the term ‘tele’ to the associated services would still require some imagination to connect the two, and if done as the trademark examining attorney suggests (via telephone) would be incorrect.”⁹ Applicant further argues that two of the third-party registrations cited by the Examining Attorney, A FOREVER RECOVERY¹⁰ and SAFETY NET

PROCEDURE (TBMP) § 1208.04 (2021). And it may do so either sua sponte or on request of the applicant or examining attorney. TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMPEP) § 710.01(c) (July 2021).

⁷ Feb. 26, 2021 Office Action at 8-113.

⁸ Applicant’s brief, 6 TTABVUE 5.

⁹ Applicant’s brief, 6 TTABVUE 5.

¹⁰ Reg. No. 4062504, Aug. 26, 2021 request for reconsideration at 6. *See* Feb. 26, 2021 Office Action at 9-11.

RECOVERY,¹¹ both for addiction treatment services, demonstrate how a suggestive prefix paired with the suffix RECOVERY can render a mark suggestive, not descriptive. As with those registered marks, it argues, the suggestive prefix TELE can render TELERECOVERY, taken as a whole, suggestive, not descriptive.¹²

We must “consider the mark as a whole and do so in the context of the goods or services at issue.” *DuoPross*, 103 USPQ2d at 1757. “Descriptiveness must be evaluated ‘in relation to the particular goods or services for which registration is sought, the context in which the mark is used, and the possible significance the term would have to the average consumer because of the manner of its use or intended use.’” *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (quoting *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)). Here, Applicant’s broad recitation of “drug and alcohol addiction counseling” contains no restrictions or limitations and therefore includes all forms of counseling, including counseling by telecommunications. “It is well established that the Board may not read limitations into an unrestricted registration or application.” *In re Country Oven, Inc.* 2019 USPQ2d 443903 at *5 (TTAB 2019) (citing *In re i.am.symbolic, llc*, 866 F.3d 1315, 123 USPQ2d 1744, 1748 (Fed. Cir. 2017)). Thus, even if Applicant does not offer its services by telephone, it still offers addiction recovery counseling by online telecommunication, which is covered by the recitation.

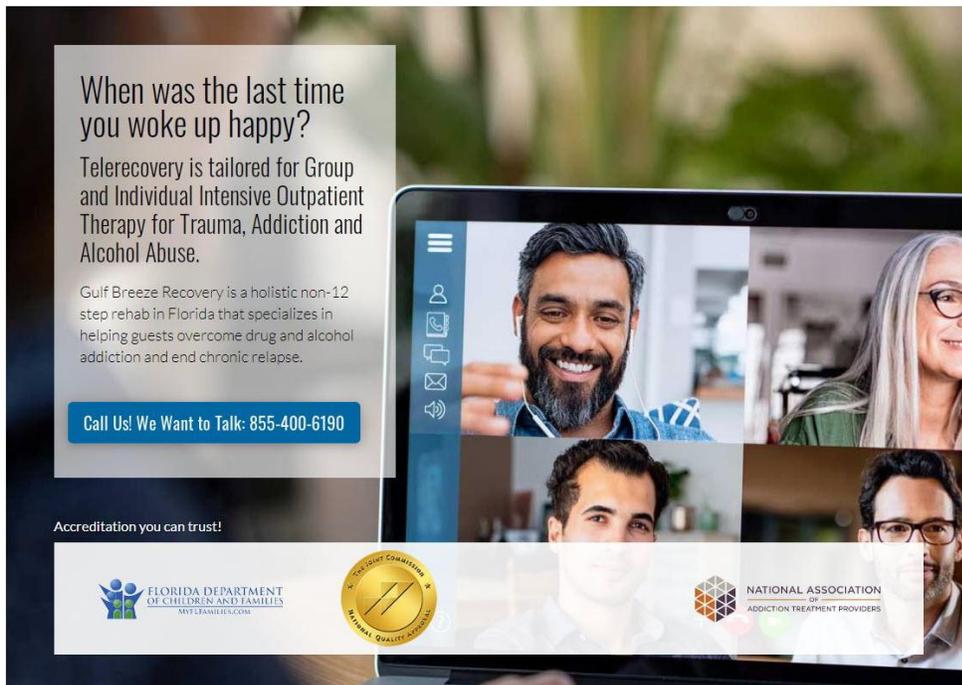
¹¹ Reg. No. 4751356 (cancelled). See Feb. 26, 2021 Office Action at 18-20.

¹² Applicant’s brief, 6 TTABVUE 6-7.

Applicant’s website describes how it provides online counseling to assist patients with recovery from addiction:

At Gulf Breeze recovery, our Telerecovery program takes **telehealth** a step further for people who are in our intensive **outpatient** and **outpatient** programs. Many people prefer our classes and therapy services **online**.¹³

The website also shows a laptop screen displaying several people speaking in a videoconference:



As an early adopter of Telehealth for Addiction Treatment, Alcoholism, and Trauma, Gulf Breeze Recovery Introduces Telerecovery.

At Gulf Breeze recovery, our Telerecovery program takes telehealth a step further for people who are in our intensive outpatient and outpatient programs. Many people prefer our classes and therapy services online.

Led by a Master’s degreed mental health counselor, we utilize our telerecovery portal for one on one therapy, and group sessions.



14

¹³ GulfBreezeRecovery.com, Feb. 26, 2021 Office Action at 7 (emphases added).

¹⁴ *Id.*

Proof that a term is merely descriptive to the relevant consuming public may be obtained from any competent source, such as websites, publications and advertising materials. *In re Fallon*, 2020 USPQ2d 11249, at *7-8 (TTAB 2020). Applicant’s website, quoted above, is one such source. *In re Reed Elsevier Props. Inc.*, 482 F.3d 1376, 82 USPQ2d 1378, 1380 (Fed. Cir. 2007) (Board appropriately reviewed applicant’s website for context to understand the generic meaning of the mark); see also *In re Promo Ink*, 78 USPQ2d 1301, 1303 (TTAB 2006) (examining attorney may introduce evidence that applicant’s own website supports descriptiveness of term, even though application based on intent-to-use). “[A]n applicant’s own website or marketing materials may be probative, or even ... ‘the most damaging evidence,’ in indicating how the relevant public perceives a term.” *In re Mecca Grade Growers, LLC*, 125 USPQ2d 1950, 1958 (TTAB 2018) (quoting *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110, 1112 (Fed. Cir. 1987)).

Applicant’s use of “telehealth” on its website illustrates how the “tele” prefix is commonly used to refer to health care services provided by telecommunication. For instance, the federal Health Resources Services Administration defines “telehealth” as:

the use of electronic information and telecommunications technologies to support long-distance clinical health care, patient and professional health-related education, public health and health administration. Technologies include videoconferencing, the internet, store-and-forward imaging, streaming media, and terrestrial and wireless communications.¹⁵

Similarly, “telemedicine” is:

the use of telecommunications technology and information technologies to

¹⁵ HealthIT.gov, Feb. 26, 2021 Office Action at 114.

provide remote clinical services to patients. Physicians use telemedicine for the transmission of digital imaging, video consultations, and remote medical diagnosis.¹⁶

In the same vein, “telerecovery” is commonly used by others to refer to health care and counseling services provided at a distance by telecommunications, such as the Internet. The Examining Attorney provides seven examples, such as:

- **Family Life Counseling**— “...Telerecovery Services are the use of technology in order to provide real-time counseling and support services from a distance.”¹⁷
- **HHS Substance Abuse and Mental Health Services Administration**— “providing a substance use focused 24-hour virtual crisis intervention service, treatment that is both telehealth and technology-based, and both virtual and telerecovery recovery support services.”¹⁸
- **SohoMD**— “SohoMD offers Tele-Recovery services that cover the dynamics of the addiction spectrum.”... “Our Tele-Recovery providers deliver virtual treatment for a variety of substance abuse disorders.”¹⁹
- **RecoveryRoom7**— “Addiction recovery right in your Home! ... Recovery Room 7 has made recovery at home possible with our telerecovery services. You’ll recover with your multi-certified life coach and Adult & Teen Challenge certified teacher right at your virtual side!”²⁰

As this third-party evidence shows, Applicant is one of many caregivers offering online counseling, including addiction counseling, under the term “telerecovery.” “The commercial context here demonstrates that a consumer would immediately understand the intended meaning of [the term].” *In re N.C. Lottery*, 123 USPQ2d at 1710. Such “descriptive terms are in the public domain and should be free for use by

¹⁶ Vsee.com, Feb. 26, 2021 Office Action at 116-17.

¹⁷ NavigateResources.net, Sept. 25, 2021 Office Action at 5.

¹⁸ SAMHSA.gov, Sept. 25, 2021 Office Action at 6.

¹⁹ SohoMD.com, Sept. 25, 2021 Office Action at 7.

²⁰ Telerecovery.carrd.co, Sept. 25, 2021 Office Action at 8.

all who can truthfully employ them to describe their goods [or services].” *Hoover Co. v. Royal Appliance Mfg. Co.*, 238 F.3d 1357, 57 USPQ2d 1720, 1722 (Fed. Cir. 2001) (citing *Estate of P.D. Beckwith, Inc. v. Comm’r of Patents*, 252 U.S. 538, 543-44 (1920)).

Applicant fails to show how the registration of A FOREVER RECOVERY and SAFETY NET RECOVERY for addiction treatment services shows that TELERECOVERY is suggestive.²¹ The fact that these registrations issued without a showing of acquired distinctiveness may indicate that the examining attorneys reviewing those applications regarded A FOREVER and SAFETY NET as inherently distinctive, but the facts and evidence of record there are not before us. As the Examining Attorney cogently observes, the terms FOREVER and SAFETY NET are completely different words with different meanings than TELE.²² And in this case, the evidence—from Applicant’s website, from other uses of “tele-,” such as “telehealth” and “telemedicine,” and from third-party websites using “telerecovery”—indicates that TELERECOVERY merely describes Applicant’s online addiction recovery services. “The Board must decide each case on its own merits. ... Even if some prior registrations had some characteristics similar to [the present] application, the PTO’s allowance of such prior registrations does not bind the Board or this court.” *In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001).

²¹ We note that the registration for SAFETY NET RECOVERY is cancelled. “An expired or cancelled registration is evidence of nothing but the fact that it once issued.” *Anheuser-Busch, LLC v. Innovopak Sys. Pty Ltd.*, 115 USPQ2d 1816, 1819 n.4 (TTAB 2016); *see also In re Embiid*, 2021 USPQ2d 577, at *35 n. 48 (TTAB 2021) (dead or cancelled registrations have no probative value).

²² Examining Attorney’s brief, 8 TTABVUE 10.

Based on the evidence, we find that TELERECOVERY merely describes a characteristic, function, and purpose of its services: using online telecommunications to help addicts recover. Its meaning would be immediately apparent without the exercise of “imagination, thought and perception to reach a conclusion about the nature of the ... services.” *In re N.C. Lottery*, 866 F.3d 1353, 123 USPQ2d 1707, 1709 (Fed. Cir. 2017). “In other words, the evidence shows that the mark is less an identifier of the source of goods or services and more a description of a feature or characteristic of those goods or services.” *Id.* at 1710.

II. Conclusion

For these reasons, we find that Applicant’s proposed mark, TELERECOVERY, merely describes its services. 15 U.S.C. § 1052(e)(1).

Decision: The refusal to register Applicant’s proposed mark is affirmed.